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STATE OF NEBRASKA
OFFICIAL
MAR 13 1992
DEPT. OF JUSTICE

DATE: March 13, 1992

SUBJECT: Interpretation of the Requirement that a Corporate Lottery Operator be Incorporated Under the Nebraska Business Corporation Act Under Neb.Rev.Stat. § 9-614 (Cum. Supp. 1990).

REQUESTED BY: M. Berri Balka, State Tax Commissioner

WRITTEN BY: Don Stenberg, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion regarding a situation involving the interpretation of the definition of the term "lottery operator" under the Nebraska County and City Lottery Act [the "Act"]. Section 9-614 of the Act defines "lottery operator" as follows:

> Lottery operator shall mean any individual, sole proprietorship, partnership or corporation which operates a lottery on behalf of a county, city, or village.
>
> A lottery operator shall be a resident of Nebraska or, if a partnership or corporation, shall be organized under the laws of this state as a partnership or incorporated under the Nebraska Business Corporation Act.

In your request, you state that an American Legion Club has formed a nonprofit corporation to run its business affairs, such as the bar and restaurant operations of the Club. The nonprofit corporation has proposed the formation of a for-profit corporation under the Nebraska Business Corporation Act in order to qualify as a "lottery operator" under § 9-614. You state that all or a substantial number of the officers and directors of the for-profit

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corporation would be officers and directors of the nonprofit corporation. In addition, all or a substantial number of the shareholders of the for-profit corporation would consist of the nonprofit corporation, its officers, directors, or members. You state "[t]he intent is for the nonprofit corporation to have control and use of all or a large portion of the profits derived from this venture."

Your question, in view of this factual scenario, is "whether a nonprofit corporation which is not eligible to hold a lottery operator's license may, for the sole purpose of obtaining a lottery operator's license, establish a for-profit corporation in order to meet the eligibility requirements for a lottery operator's license under the Nebraska County and City Lottery Act?"

A fundamental principle of statutory construction is to attempt to ascertain legislative intent and to give effect to that intent. County of Lancaster v. Maser, 224 Neb. 566, 400 N.W.2d 238 (1987). The reasons for the enactment of a statute, and the purposes and objects of the act, may be guides in attempting to give effect to the intent of lawmakers. State v. Jennings, 195 Neb. 434, 238 N.W.2d 477 (1976). A statute should be interpreted in such a manner as to give effect to the purpose and intent of the legislature as ascertained from the entire language of the statute in its plain and ordinary sense. NC+ Hybrids v. Growers Seed Ass'n, 219 Neb. 296, 363 N.W.2d 362 (1985). A statute should be construed in the context of the mischief sought to be remedied and the purpose to be served. In re Boundaries of McCook Public Power District, 217 Neb. 11, 347 N.W.2d 554 (1984). In construing a legislative act, resort may be had to the history of its passage for the purpose of determining legislative intent. Georgetown Ltd. Partnership v. Geotechnical Services, Inc., 230 Neb. 22, 430 N.W.2d 34 (1988).

Under § 9-614, the sole requirement imposed upon a corporation seeking to qualify for a license as a "lottery operator" is that the corporation be "incorporated under the Nebraska Business Corporation Act." The statute itself, by its plain terms, does not preclude the establishment of a separate corporation under the Nebraska Business Corporation Act for this purpose by a nonprofit corporation. While, under the facts presented, the proposed for-profit corporation will be closely tied to the nonprofit corporation, the language of § 9-614 establishes no clear intent to preclude such an arrangement.

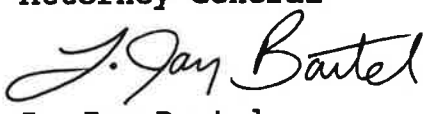
The requirement that a corporation seeking to obtain a license as a "lottery operator" must be "incorporated under the Nebraska Business Corporation Act" was imposed by an amendment adopted in 1990. 1990 Neb. Laws, LB 1055, § 6. We have examined the legislative history behind the 1990 amendment, and such reveals little to aid us in our construction of the intent behind this provision. The introducer of the amendment indicated the intent

was to clarify that nonprofit organizations licensed to conduct other gaming activities (specifically, bingo games), would not be eligible to run lottery activities (specifically, keno) on behalf of counties and cities without having obtained a license to conduct lottery activities for such entities under the Act. Floor Debate on LB 1055, April 3, 1990, pp. 12753-12760. This explanation is of little assistance, as even without such change, separate licenses would be required for organizations seeking to conduct bingo games and to conduct lottery activities under the Act. To the extent the history is helpful, it demonstrates the primary concern was that nonprofit organizations licensed to conduct other gaming activities would not apply for licenses to act as lottery operators, thus precluding the Department's review of a license application by such an organization seeking to act as a "lottery operator." Based on the factual scenario you have described, no such concern exists, as it appears the proposed for-profit corporation is to be formed for the purpose of making application for a license as a "lottery operator" under the Act, thus addressing the perceived "mischief" to be remedied which the amendment was designed to address.

In conclusion, it is our opinion that, based on the facts you have outlined, the requirement that a corportion seeking licensure as a "lottery operator" under the Act be "incorporated under the Nebraska Business Corporation Act" does not preclude the Department's consideration of an application for such a license by a duly incorporated for-profit corporation under the circumstances described in your request. Our opinion, of course, is limited to addressing the issue of whether the Department may consider such an application and should not be construed to impact any issue regarding whether a license application filed by a particular entity should be granted by the Department.

Very truly yours,

DON STENBERG
Attorney General



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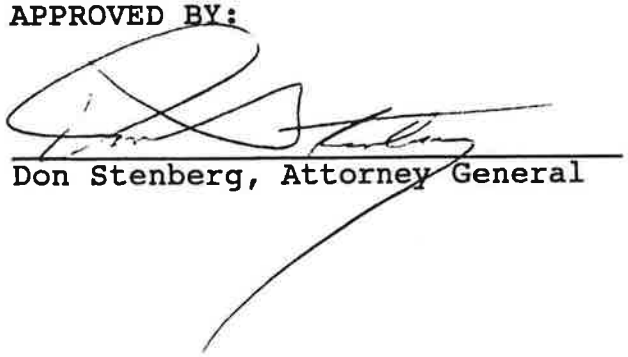

Don Stenberg, Attorney General